

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**GEORGE SKATZES,**

**Petitioner, : Case No. 3:09-cv-289**

- v -

**District Judge Timothy S. Black  
Magistrate Judge Michael R. Merz**

**WARDEN, Mansfield Correctional  
Institution,**

**Respondent. :**

**ORDER**

This capital habeas corpus case is before the Court on Petitioner's Renewed Motion for Discovery (Doc. No. 77) to which the Warden has responded (Doc. No. 79). The case came on for scheduling conference in person on June 7, 2012 with Joseph Wilhelm representing Petitioner and Charles Wille representing Respondent.

Counsel agreed at the outset of the hearing that neither party had objected to the Decision and Order of February 24, 2012 (Doc. No. 76), granting in part and denying in part Petitioner's first Motion for Discovery (Doc. No. 51). That Order has therefore now become the law of the case with respect to the discovery granted or denied therein.

In the February discovery order, the Court permitted Petitioner to depose his trial counsel (Requests # 1.7, 2.4, 3.4, 4.1). At Petitioner's request during the hearing and without objection

by the Warden, it is hereby ORDERED that those depositions be postponed until after the document discovery allowed herein. However, the document discovery allowed in the February discovery order should be produced forthwith to the extent it has not already been produced.

Respondent renewed the offer previously made to make available to Petitioner's counsel the same access to information held by the Ohio Highway Patrol regarding the case that was made available to counsel for Petitioner Jason Robb in Case No. 2:02-cv-535. Petitioner has accepted that proposal and therefore the Renewed Motion is GRANTED as to those materials on the following conditions:

1. Mr. Wille will promptly provide to Mr. Wilhelm a draft protective order parallel to the order entered in the Robb case.
2. Once the Court has entered the protective order (either in agreed form or as adjudicated if complete agreement cannot be reached), Petitioner's counsel will have 120 days to complete examination of these materials.
3. The Court understands that the referenced materials include the prosecutor's investigative file(s). Materials withheld from this production on a claim of work product protection or other claim of privilege will be produced to the Court for *in camera* inspection with a privilege log.
4. Not later than sixty days after Petitioner's counsel complete this examination, they shall file under seal all documents they claim are relevant to show "gateway" actual innocence with a memorandum explaining their relevance. The Warden may respond to the memorandum within twenty days of its filing.

In addition to the above-referenced materials, Petitioner seeks access to the Rules Infraction Board files of inmates who testified at the trial in this case. Respondent stands on his objection to that production, but acknowledges that parallel production has been ordered by Judge Marbley in the Robb case and by Chief Judge Dlott in the *Hasan* case, No. 1:03-cv-288. For the reasons previously given by the undersigned for maintaining consistency in litigation of the Lucasville riot capital cases, the Warden is ordered to produce those files.

Decision on whether to permit certain discovery was postponed until after a decision on whether certain Grounds for Relief are to be reviewed de novo or deferentially under 28 U.S.C. § 2254(d)(1) or whether they are procedurally defaulted. Based on the parties filings on the Renewed Motion for Discovery, the Magistrate Judge understands those issues to be ripe for decision and will proceed to recommend a decision unless either party advises the Court not later than June 20, 2012, of its desire to file additional argument on one of those issues.

The Renewed Motion is granted to the extent set forth in this Order and otherwise denied.

June 7, 2012.

s/ **Michael R. Merz**

United States Magistrate Judge